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U.S. Citizenship and Immigration Services

H4

[redacted]

FEB 06 2004

FILE: [redacted] Office: JACKSONVILLE, FL Date:

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Jacksonville, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Slovak Republic who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant is married to a United States citizen and seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen wife. The application was denied accordingly. *See* District Director Decision, dated August 7, 2002.

On appeal, the applicant's wife states that the United States Embassy in Bratislava, Slovakia issued the applicant a 10-year visa. She further indicates that the applicant lost his Form I-94 Arrival and Departure Record. In addition, the applicant's spouse questions why the fact that she "got pregnant by another man" while married to the applicant should be a reason for the Immigration and Naturalization Service [now Citizenship and Immigration Services] to deny the applicant permanent residency.

The record contains a copy of the U.S. birth certificate of the applicant's wife; a copy of the marriage record for the applicant and his spouse and a copy of the United States visitor visa issued to the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
> >
> > . . . .
> >
> > (v) Waiver. – The Attorney General [now Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present application, the record indicates that the applicant entered the United States with a visitor visa on November 13, 1997 with authorization to remain in the country until May 13, 1998. The applicant's wife contends that the applicant was issued a 10-year visa. *See* Letter from [redacted] dated August 27, 2002. The AAO notes that the visitor visa issued to the applicant expires ten years from the date on which it is issued, however, on November 13, 1997, the applicant was admitted to the United States for a period of six months from his date of entry.

The applicant remained in the United States beyond his authorized period of stay. On June 26, 2000, the applicant married a citizen of the United States. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on December 21, 2000. In April 2001, the applicant was issued Authorization for Parole of an Alien into the United States (Form I-512) and subsequently used the advance parole authorization to depart and reenter the United States.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* The applicant accrued unlawful presence from May 13, 1998, the date ending his period of authorized presence in the United States, until December 21, 2000, the date of his proper filing of the Form I-485. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(a)(9)(B)(v) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

While the record contains evidence of the applicant's relationship to his U.S. citizen wife, the record does not demonstrate that extreme hardship will be imposed on the applicant's spouse if the applicant departs the United States. The applicant's wife states that she and the applicant have a good marriage and that the applicant works hard to provide for her and her children. She reports that the applicant cared for her after a recent surgery when no one else was available to do so. *See* [redacted] dated August 27, 2002. However, the record contains no documentation substantiating the statements of the applicant's wife beyond her own assertions. The record makes no assertions regarding the factors identified in *Cervantes-Gonzalez*. The record does not indicate the amount of income earned by the applicant and it

does not demonstrate that the applicant's spouse is unable to financially provide for herself and her children. The record makes no assertions regarding the ability of the applicant's spouse to relocate to the Slovak Republic in order to remain with the applicant. The record does not establish any significant conditions of health experienced by the applicant's spouse.

Despite the assertions of the applicant's spouse, the decision of the district director does not indicate that it is predicated on the paternity of the child(ren) of the applicant's spouse. On the contrary, the decision of the district director found that the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act and is ineligible for a waiver under section 212(a)(9)(B)(v) of the Act because the applicant failed to establish that extreme hardship would be imposed on a qualifying relative if his waiver were denied.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA) 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

A review of the evidence in the record, when considered in its totality reflects that the applicant has failed to establish that his U.S. citizen wife would suffer "extreme hardship" if he were denied a waiver of inadmissibility. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.